

**SELF-CLOSING CONTAINERS
(SQUEEZE-TYPE COIN PURSES)**

**Investigation No. 337-18
Under the Provisions of
Section 337 of Title III of the
Tariff Act of 1930, as Amended**



TC Publication 55

**Washington
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UNITED STATES TARIFF COMMISSION

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(TC29128)

UNITED STATES TARIFF COMMISSION
Washington

In the matter of an investigation	Ø	Docket No. 18
with regard to the importation or	Ø	
domestic sale of certain foreign-	Ø	Section 337
manufactured, self-closing	Ø	
containers.	Ø	Tariff Act of 1930, as amended

Introduction

On June 2, 1960, the Tariff Commission received a complaint under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337)^{1/}, filed by the Quikey Manufacturing Company, Inc. of Akron, Ohio (hereinafter called "Quikey"). In the complaint Quikey alleged that certain foreign-manufactured, self-closing containers (also known as squeeze-type coin purses) embodying or containing the invention disclosed in complainant's United States Reissue Patent No. 24,166 were being imported into the United States and sold domestically without license from the patent holder, and that as a result unfair methods of competition were being employed or unfair acts were being committed which had caused and would continue to cause substantial injury to complainant.^{2/}

On June 21, 1960, the Commission initiated a preliminary investigation to determine (1) whether the institution of a full investigation under section 337 was warranted and (2) whether the issuance of a temporary order of exclusion from entry under section 337(f) was warranted.

^{1/} Section 337 is set forth in this report. See Appendix A, page 46.

^{2/} A motion to amend the original complaint was received by the Commission on June 15, 1960 and was granted on June 21, 1960.

Public notice regarding receipt of the complaint as amended and initiation of the preliminary investigation was published in the Federal Register for June 25, 1960 (25 F.R. 5894) and in the Treasury Decisions for June 30, 1960, and was posted at the offices of the Commission in Washington, D.C. and New York City. The notice afforded interested persons an opportunity to submit their views regarding the subject matter of the inquiry to the Commission in writing not later than July 15, 1960. The only respondent named in the complaint, Kroll Trading Company (hereinafter called "Kroll"), submitted a written statement. No other interested party submitted a statement.

On June 14, 1961, the Commission ordered a full investigation for the purposes of section 337 with regard to imported self-closing containers which are made in accordance with, embody, employ, or contain the invention disclosed in the complainant's patent, and ordered a public hearing to be held in connection with the investigation on September 12, 1961. A public notice regarding institution of the investigation and scheduling of the hearing was published in the Federal Register for June 20, 1961 (26 F.R. 5482) and in the Treasury Decisions for June 22, 1961, and was posted at the offices of the Commission. The notice provided that all persons concerned--those who entered an appearance in accordance with the Commission's rules--would be afforded an opportunity to be present, to produce evidence, and to be heard concerning the subject matter of the investigation. A copy of the amended complaint and of the notice were sent to Kroll and to each other importer or consignee believed to have an interest in the investigation. Kroll was

given 30 days within which to submit a written answer and to show cause, if any, why the provisions of section 337 should not be applied with respect to the unfair methods of competition and unfair acts alleged in the amended complaint. The written statement submitted by Kroll during the preliminary inquiry was resubmitted by Kroll as its written answer. The other importers or consignees were given 30 days within which to submit written statements as to why the provisions of section 337 should not be applied with respect to foreign-manufactured, self-closing containers of the kind imported and/or sold domestically by them. No such statements were received.

1/

On June 22, 1961, the Commission transmitted a report to the President recommending that he request the Secretary of the Treasury to exclude certain self-closing containers from entry into the United States, except under bond, pending completion of the Commission's investigation. The Commission was later advised that the President had decided not to issue a temporary exclusion order.

On August 1, 1961, the Commission postponed the hearing until October 3, 1961. A public notice regarding the postponement was published in the Treasury Decisions for August 3, 1961 and in the Federal Register for August 4, 1961 (26 F.R. 7026), and was posted at the offices of the Commission.

On October 3, 1961, the hearing was held. Quikey and Kroll were the only interested parties participating. At the conclusion of the hearing Quikey and Kroll were granted leave to file briefs before November 13, 1961. A brief was filed by Quikey only.

1/ The present Chairman was not then a member of the Commission.

On March 8, 1962, the Commission found that violations of section 101 had been committed.

In accordance with the statutory requirements, testimony at the hearing was reduced to writing, and a transcript thereof, together with the findings and recommendation of the Commission, form the official record of the proceedings and findings in this investigation.

1/
Findings of the Commission

United States Reissue Patent No. 24,166 is a current patent, and it has not been held invalid by a court of competent jurisdiction.

On February 2, 1954, United States Patent No. 2,667,906 for a "Self-Sealing Container" was issued to Benjamin Stiller. The invention relates to a container for coins, keys, or like objects, and in particular to a specific construction of rubber-like material having a slit in one face which responds to pressure applied lengthwise of the slit to provide a partial opening for placing articles in the container or removing them therefrom. On June 12, 1956 the original patent was surrendered, and United States Reissue Patent No. 24,166, embodying certain additions and deletions from the original patent, was issued in place of the original patent.
2/
On December 31, 1959 the patentee assigned his entire interest in the title, and interest in the reissue patent to Quikey.

Chairman Dorfman finds that on the basis of all available evidence it is not shown that the effect or tendency of the imports of self-sealing containers is to destroy or substantially injure the industry producing such articles in the United States. He thus deems it unnecessary to make further findings. His separate statement begins at page 22 of the report.

The reissue patent will remain in effect for 17 years from the date of issuance of the original patent, i.e., until February 2, 1971.

On May 27, 1959, after contested litigation, the United States District Court for the Northern District of Ohio found that the patent is valid and was infringed.^{1/} On May 2, 1960, the United States Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court, and remanded the cause for further proceedings not inconsistent with its order.^{2/} On October 10, 1961, the Supreme Court denied certiorari.^{3/}

In light of the foregoing, it appears that the patent involved in the subject investigation is current and has not been held invalid by a court of competent jurisdiction.

2. Unfair methods of competition are being employed or unfair acts are being committed in that certain self-closing containers (squeeze-type coin purses) which are manufactured in Hong Kong and Japan and embody or contain the invention disclosed in United States Reissue Patent No. 24,166 are being imported into the United States or sold domestically without license from the registered owner of the patent.

If an article manufactured in a foreign country is made in accordance with, embodies, employs, or contains the invention disclosed in a current United States patent that has not been held invalid by a court of competent

^{1/} Squeez-A-Purse Corp. v. Stiller, 175 F. Supp. 667 (N.D. Ohio, 1959).

^{2/} Squeez -A-Purse Corp. v. Stiller, 280 F. 2d 424 (6th Cir., 1960).

Upon remand, the District Court entered a judgment differing in a number of material respects from its original judgment. This occasioned another appeal, which resulted in an order that the final judgment should conform in all material respects to the original judgment which had been affirmed. See Stiller v. Squeez-A-Purse Corp., 296 F. 2d 504 (6th Cir. 1961).

^{3/} Squeez-A-Purse Corp. v. Stiller, 364 U.S. 828, 81 S. Ct. 67, 5 L. Ed. 2d 56 (1961).

jurisdiction, it is an unfair method of competition or unfair act, within the meaning of section 337 of the Tariff Act of 1930, to import such article into the United States or sell it domestically without license from the registered owner of the patent. This determination is in accord with the applicable decisions of the United States Court of Customs and Patent Appeals. See In re Von Clemm, 43 C.C.P.A. (Customs) 56, 229 F. 2d 441, 443 (1955); In re Orion Co., 22 C.C.P.A. (Customs) 149, T.D. 47123, 71 F. 2d 458, 465 (1934); and In re Northern Pigment Co., 22 C.C.P.A. (Customs) 166, T.D. 47124, 71 F. 2d 447, 455 (1934). See also Frischer & Co., Inc. v. Bakelite Corporation, 17 C.C.P.A. (Customs) 494, T.D. 43964, 39 F. 2d 247, 260, cert. den. 282 U.S. 852, 51 S. Ct. 29, 75 L. Ed. 755 (1930).

The basic concept of United States Reissue Patent No. 24,166 is set forth in claim 1 of the patent as follows: A quick opening and self-closing container for articles comprising a unitary envelope of material having elastic properties similar to those of soft rubber, said envelope defining a substantially fully closed interior volume having depth relatively small in comparison to dimensions transverse to its depth, and having a substantially transverse normally closed slit on one face extending from periphery to an opposite periphery. The remaining claims of the patent are of varying scope from claim 1.

A detailed Patent Study is presented in this report. (See appendix B, page 49.) As the Patent Study reveals, the Tariff Commission finds ^{1/} that

^{1/} Chairman Dorfman does not consider it necessary to participate in the patent study or findings based thereon. See fn. 1, p. 4.

claims of the patent read on (i.e., are embodied or contained in) the following:

(a) self-closing containers manufactured in Hong Kong by the China Plastics Company, Inc., imported into the United States from December 1959 through 1961, sold domestically, and represented by Complainant's Exhibit G and Respondent's Exhibits 1 and 2; 1/

(b) self-closing containers manufactured in Japan by Fujiya Seika, imported into the United States during 1960, sold domestically, and represented by Complainant's Exhibits H and II;

(c) self-closing containers manufactured in Japan, exported by the Japan Bicycle Exporters Association, imported into the United States during 1962, and represented by the Commission's Exhibit 4;

(d) self-closing containers manufactured in Hong Kong by the Empire Trading Company, Ltd., imported into the United States during 1960 and 1961, sold domestically, and represented by the Commission's Exhibits 5 and 6;

(e) self-closing containers manufactured in Hong Kong by the Wong Hau Plastic Works and Trading Company, imported into the United States during 1961, sold domestically, and represented by the Commission's Exhibit 7; and

(f) self-closing containers manufactured in Hong Kong by the United Manufacturers Trading Corporation, imported into the United States during 1961, sold domestically, and represented by the Commission's Exhibit 8.

1/ The General Manager of the China Plastics Company admits that the general appearance and functional use of his product are the same as those of the patented product. See Foreign Service Despatch 442, dated December 19, 1960.

3. An industry in the United States manufactures and sells self-closing containers (squeeze-type coin purses) under the authority of, and embodying or containing the invention disclosed in, United States Reissue Patent No. 24,166, and such industry is efficiently and economically operated.

The domestic industry affected by the importation and domestic sales of the self-closing containers or coin purses in question is the industry legally entitled to manufacture and sell containers of the type described in U.S. Reissue Patent No. 24,166. Since complainant is the sole owner of this patent, has not licensed any individual or firm to produce containers under the patent, and produces ^{1/} and sells containers which (as revealed in the Patent Study) embody or employ the invention disclosed in the patent, this company constitutes an "industry *** in the United States" within the meaning of section 337 for purposes of this investigation.

Only an "efficiently and economically operated" industry can qualify for relief under section 337. Respondent Kroll claims that the dipping process for the manufacture of various plastic products was in use for many years but, because of its relatively high cost, has been supplanted in large degree by the more economical process of blow molding. It is asserted that the domestic industry, in failing to convert from hand dipping to the machine method of blow molding has failed to exploit an opportunity to reduce its production costs

^{1/} The basic patented containers are made for Quikey by a firm under contract to Quikey. Quikey then performs such finishing operations as printing, chaining, carding, and packaging.

to a level comparable with those of the blow-molded purses imported by Kroll, and therefore cannot qualify as an "efficiently and economically operated" industry eligible for relief under the statute. Complainant replies that it has investigated the blow-molding method and also the method of injection molding, and has concluded that it can produce a better product by the dipping process. Complainant further states that maintaining the high quality of its product has been of primary importance to the domestic industry, thus implying that any small savings that might be possible through the use of a different but technically less satisfactory process are not policy controlling. Moreover, Quikey asserts, its dipping process is not a hand method of production, as claimed by Kroll, since 80 or 90 purses are dipped at one time.

Quikey has steadily made reductions in the prices of its product during a period of years ^{1/} in which its costs for labor and materials were constantly increasing.

On the basis of all of the available evidence, including financial records submitted in confidence, the Commission concludes that the domestic industry is "efficiently and economically operated" within the meaning of section 337.

^{1/} See page 18 of this report.

4. The effect or tendency of the unfair methods of competition being employed or unfair acts being committed in the importation or domestic sale of the foreign-manufactured, self-closing containers (squeeze-type coin purses) in question is to substantially injure an industry in the United States.

"Effect or tendency". It has been established that foreign-made, self-closing containers embodying or containing the invention disclosed in United States Reissue Patent No. 24,166 are being imported into the United States or sold in the domestic market in competition with similar containers produced in this country for the account of the owner of the patent, and that such importation or sale is without license from the owner of the patent. It has also been established that the patented containers are produced in the United States by an efficiently and economically operated industry. There remains, therefore, the question of whether the "effect or tendency" of the unfair methods of competition or unfair acts represented by the fact of such importation or sale is to "destroy or substantially injure" the said industry.

We believe the record shows amply that the domestic industry concerned has been substantially injured by reason of the importation or domestic sale of the foreign-produced containers. In any event, there can be no question that the importation or domestic sale of the patented containers has a "tendency" to substantially injure the industry, and that such "tendency" alone is sufficient to warrant relief under the statute. (See In re Von Clemm, supra.)

Production and sales. Quikey has been producing and selling self-closing coin purses for about 11 years. Beginning in 1951 (the first year of operation) production and sales of its containers increased rapidly, reaching a peak in 1955. Thereafter, they declined in every year until 1959, when a small increase over the preceding year was recorded. The downward trend was resumed in 1960 and continued through 1961.

Among the factors contributing to the decline in sales by Quikey has been the competition offered by purses produced by other companies in the United States in contravention of the patent, and by purses imported from Japan and Hong Kong. In several instances the Quikey company has succeeded through litigation in putting a stop to infringing domestic production. Infringement proceedings before the federal courts, however, are inadequate to prevent illegal importations. As the Commission's investigation disclosed, Kroll has not been the only importer of patented containers: there have been many. A judicial decree against one dealer would have no binding effect upon others; a multiplicity of suits would be necessary, usually attended by high costs and the realization of only small damages in each case and offering little likelihood that all infringing importers and dealers in the imported containers could be reached.

Channels of distribution. About 75 percent of the coin purses produced by Quikey and sold in the United States are distributed through the advertising specialty field. The advertising specialist solicits orders from banks, building and loan associations, filling stations, etc. He then orders the purses from Quikey, and they are delivered with the customer's advertising matter printed thereon. The purses are used by the customer as "giveaways" to build goodwill for his business.

The remainder of Quikey's production is marketed through jobbers to the retail trade--mostly five-and-ten-cent stores. Some of the purses marketed in this manner bear no printed material; others are imprinted with various designs such as public buildings, monuments, etc., and are sold as souvenirs.

It appears that no imported self-closing purses have thus far been marketed in the United States as advertising specialties. It is alleged that one reason is the difficulty in effecting adjustments when errors are made in the printing of advertising copy; such adjustments, it is said, are more difficult to make when the printing is done abroad or even in the United States on imported purses. ^{1/} Therefore, all of the imported purses marketed in this country thus far have been sold across the counter as novelty items. However, the Commission believes that in

^{1/} De Jong, Transcript, pp. 11, 123-24.

the absence of an exclusion order imports may enter the advertising field as well as the field of retail sales. The advertising field is too large and the profit possibilities are too attractive to be ^{1/}neglected.

Imports. Imports of the self-closing containers or purses in question are dutiable at 20 percent ad valorem under paragraph 1531 of the Tariff Act of 1930 by virtue of their similitude, under the provisions of paragraph 1559, to coin or change purses made of leather. Since imports of the purses are not separately reported in import statistics, the Tariff Commission in August 1960 requested the U. S. Bureau of Customs to report to the Commission on all imports at certain ports of entry of coin purses which closely resemble those produced by Quik^{2/}ey. Information was also requested from importers already known to the Commission and from those whose identity was disclosed by records of the Bureau of Customs. The information thus derived indicates that imports of the purses in question amounted to 5,500 gross in 1960 and 1,342 gross in 1961. A comparison of the volume of imports with that of sales by the domestic industry in 1960 or 1961 may not be published because sales data for those years were received by the Commission in confidence. It may be said, however, that imports in 1960 were equivalent to about 21 percent of the domestic industry's

^{1/} See pp. 19-20 for further comment.

^{2/} In August 1961 this request was expanded to include such imports at all ports of entry, retroactive to Jan. 1, 1960.

total sales, and to 84 percent of its sales across the counter, in 1958, the last year for which non-confidential sales data are available. If the general trend in domestic sales continues downward, as it has since 1955, these ratios of course will rise even without an increase in imports; and if the downward trend in sales is accompanied by the increases in imports which may well be expected in the absence of an exclusion order, there is a strong probability that the domestic industry will lose the major part of its market.

The heavy decline in imports in 1961 was doubtless due to the uncertainties arising from the present investigation; importers naturally would be reluctant to place orders so long as the possibility existed that an exclusion order would be applied to imports. The decline therefore should not be regarded as anything more than a temporary lessening of the threat posed to the domestic industry by the importation of the purses in question.

All imports in 1960 and 1961 ^{1/} of the self-closing purses of the kind under discussion originated in Japan and Hong Kong. Some of these purses are smaller than the Quikoin (trade name for Quikey's purse) and, although embodying the invention disclosed in the patent, would ordinarily not be mistaken for the Quikoin; others, however, are of approximately the same size and shape as the Quikoin and are distinguishable from it only

^{1/} One import shipment is reported to have been received in December 1961. With this one exception, there is no evidence of any shipments before 1960.

as a result of close examination. All of the imported purses and Quikey's purse serve the same purpose, and when the imports are sold domestically at about half the price of the Quikoin, as they were in 1960 and 1961, they offer severe competition to the patented product.

Future imports. Before the present investigation was ordered, the domestic industry attempted through diplomatic channels to obtain protection against the "infringing" imports. As a result of these endeavors, the American Commercial Attache in Tokyo reported in 1960 that the Japanese Ministry of International Trade and Industry became convinced in June 1960 that the export to the United States of certain Japanese-made containers or purses of the self-closing variety constituted a patent "infringement" and, in conformity with its usual practice in such cases, gave assurances that it would issue orders to the known manufacturers and to any shippers found handling the products to cease exportation to the United States immediately. ^{1/} This kind of control of course has its limitations. These plastic containers can easily be made in a large variety of designs, sizes, etc., and the Japanese officials cannot be expected to be so familiar with the various claims of the Quikey patent that they can always unerringly detect instances of "infringement." ^{2/}

^{1/} Foreign Service Despatch 1537 dated June 28, 1960.

^{2/} The U.S. Bureau of Customs has advised the Commission that a shipment of coin purses very similar to the Quikoin, manufactured in Japan, were entered in January 1962. Investigation disclosed that this shipment was supplied to the importer without charge. Advertising matter was imprinted on the coin purses, and they were exported for distribution as gifts to bicycle dealers. It is not known whether this shipment escaped attention of the export-control authorities, or whether it was approved for export because of its noncommercial character.

No system exists in Hong Kong to control the export of products that may have been produced and exported under conditions involving "infringement" of a U.S. patent. The principal Hong Kong producer, when first approached upon the matter, categorically refused to cease shipments to the United States whenever he might receive orders. Later in the year, however, he admitted that his purse, although made by a different process, was the same as the Quikey purse in general appearance and use, and stated that he was prepared to cease shipping to the United States if he received evidence that the process of manufacture was immaterial to the question of "infringement." ^{1/} Although such evidence was supplied to this producer through the office of the American Consul in Hong Kong, ^{2/} it seems clear that future U.S. imports from all Hong Kong sources will continue to be at the discretion of either the manufacturer or the jobber to whom he might sell his product unless an exclusion order is issued pursuant to section 337. If the coin purses in question are exported freely from Hong Kong and permitted to enter the United States without restriction, the Japanese authorities may understandably become reluctant to continue their embargo on exports from Japan to the United States.

In view of the fact that imports from Japan and Hong Kong in the first (experimental) year of importation (1960) were equivalent to a large percentage of annual sales by the only legitimate domestic producer, the probability is strong that future imports from those sources, if not checked, will cause not only very substantial but even irreparable injury to that

^{1/} Foreign Service Despatch 422, dated Dec. 19, 1960.

^{2/} U.S. Department of State Instruction 4-108, dated Feb. 21, 1961.

producer. Moreover, there is no apparent reason why imports should not come from other countries as well as from Japan and Hong Kong. This is because the methods used in producing these plastic purses or containers are simple, the capital requirements are small, and the profit possibilities in supplying the U. S. market are attractive. Considering such developments to be not only possible but normally to be expected, the Commission is of the opinion that the only effective method of preventing the destruction of, or substantial injury to, the industry involved in this investigation is to invoke the import-exclusion provisions of section 337.

Prices. The prices paid to Quikey by the advertising specialist and those charged by him to the ultimate distributor (filling station, bank, bowling alley, etc.) depend upon several factors, the principal one being the size of a particular order. In January 1961, for example, standard oval purses in red, blue, green, or gray, with not more than 5 straight lines of white print on the plain side, sold to the ultimate distributor at 30 cents each on orders of not more than 144 units. The price then declined with the increasing size of the order, becoming 19.5 cents each on an order for 10,000 units. Other factors affecting price are additional printing, printing in curved lines, printing on the slit surface, use of special colors, attaching chains, etc.

Quikoins sold at retail are mounted on display cards, in contradistinction to those distributed through the advertising field. Nevertheless, they

can be produced at somewhat less cost than those distributed as advertising media because many of them carry no imprint, and those that are imprinted have only standardized designs suitable for souvenirs. Retail prices doubtless vary from one locality to another, but one large chain of retail stores (Woolworth's) sells Quikoins at 29 cents each.

Prices charged by Quikey to the advertising specialist and the wholesale jobber vary according to the specifications of particular orders, as stated before, but the yearly averages since 1955 have ranged from 13.8 to 14.3 cents per unit.

Quikey contends that it has reduced prices in recent years. In support of that contention it submits the following data respecting prices charged to advertising and wholesale jobbers on orders for specified quantities: 1/

Item	1956	1957	1958	1959
	10-gross quantities (per unit)			
No. 40 (without chain)-----	\$0.1325	\$0.1208	\$0.1166	\$0.1141
No. 50 (with chain)-----	.1500	.1375	.1308	.1308
	1-gross quantities (per unit)			
No. 40 (without chain)-----	.1400	.1283	.1283	.1208
No. 50 (with chain)-----	.1575	.1458	.1458	.1375

Imported purses have varied considerably in size and quality and

1/ See Complaint, p. 11, and testimony of complainant's Stiller, Transcript, p. 38. For purposes of this report the data have been converted from prices per dozen to prices per unit.

in the degree of their resemblance to the Quikoin, and their invoice values in 1960 ranged from about \$1.10 to \$3.40 per gross. Most of the imported purses were obviously inferior in quality to the Quikoin, but the landed value (duty paid) of those most nearly resembling it was about 3 cents each, of \$4.32 per gross.^{1/} These purses were offered to the retail trade at \$10.75 per gross at a time when the unprinted Quikoins, mounted 12 to the card (as were the imports), were being offered to jobbers at \$19.80 per gross.^{2/}

Competitive conditions. The Quikoin thus far has had to meet competition with imported purses only in the field of retail sales. In this competition the imported purse has a price advantage over the domestic product. When a retailer can purchase imported purses for about 7-1/2 cents each (\$10.75 per gross), it is obvious that he can make a satisfactory profit even when selling at far less than the 29-cent price customarily charged for Quikoins. The price may, in fact, be so much lower than the price for Quikoins that it more than compensates for the admittedly inferior quality of the imported article.

There can be little doubt that, if importation of the "infringing" purses or containers is permitted to continue, they will inevitably enter the advertising field as well as the field of retail sales. In fact, the

^{1/} Transcript, p. 129.

^{2/} Complaint, pp. 6 and 7, and exhibit I.

latest shipment of purses received from Japan, referred to above (footnote 2, p. 15), carried advertising matter, and the purses were to be used as "giveaways" in the bicycle trade. If Quikey should be faced with foreign competition from "infringing" containers in the field of its major activity, the advertising market, this competition, considering the wide disparity in prices between the imported and patented purses, could well-nigh destroy an industry which section 337 is designed to protect.

Conclusions

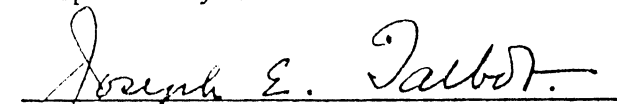
All of the evidence adduced in this investigation indicates that certain self-closing containers or coin purses made in accordance with or embodying a United States patent have been produced in Japan and Hong Kong and imported and sold in the United States without license from the patentee; that such importation and sale, according to ample precedent, constitute unfair methods of competition or unfair acts under section 337 of the Tariff Act of 1930; that such unfair methods or acts have caused injury to an easily identifiable, efficiently and economically operated domestic industry by invading the markets reserved to that industry for a term of years by its rights as a patentee; that the injury so caused has been substantial, inasmuch as sales of the imported purses in the first year of importation were equivalent to at least 20 percent of the domestic industry's yearly sales, and to at least 80 percent of its sales for the retail trade; and, finally, that the sales resistance of the domestic industry's customers in the advertising field is greatly increased when they learn that imported self-closing purses are being made available to the retail trade at a very much lower price than that which the advertisers

have been paying for Quikoins,^{1/} and the domestic industry is therefore substantially injured in its main field of activity as well as in the area of retail sales.

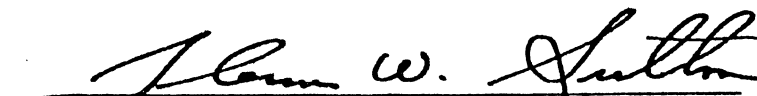
^{2/}
Recommendation of the Commission

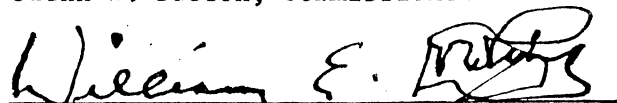
The Tariff Commission recommends that, in accordance with section 337(e) of the Tariff Act of 1930, the President direct the Secretary of the Treasury to instruct customs officers to exclude from entry into the United States until and including February 2, 1971 (the date of patent expiration), all foreign-manufactured, self-closing containers (squeeze-type coin purses) which are made in accordance with, embody, employ, or contain the invention disclosed in United States Reissue Patent No. 24,166, except where the importation is made under license of the registered owner of the said patent.

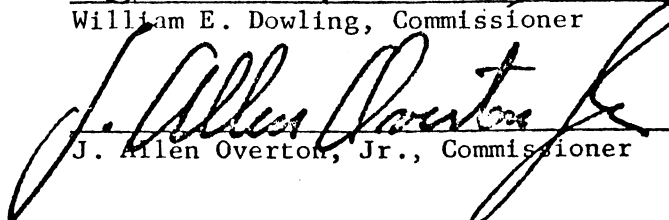
Respectfully submitted


Joseph E. Talbot, Commissioner


Walter R. Schreiber, Commissioner


Glenn W. Sutton, Commissioner


William E. Dowling, Commissioner


J. Allen Overton, Jr., Commissioner

^{1/} Stiller, Transcript, p. 67.

^{2/} Chairman Dorfman does not join in this recommendation for the reasons given in his separate statement beginning at page 22 of this report.

DISSENTING STATEMENT OF CHAIRMAN DORFMAN

I do not concur in the finding by the other Commissioners that the importation of the squeeze coin purses here under consideration has the effect or tendency to destroy or substantially injure an efficiently and economically operated domestic industry. In my view the record is devoid of factual support for such a finding; in consequence, there is absent an essential statutory criterion upon which to predicate a recommendation that imports of the article in question be excluded from the United States.

The statute pursuant to which this investigation has been conducted, section 337 of the Tariff Act of 1930, as amended, provides that--

Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, * * * are hereby declared to be unlawful * * *.

Only when the President finds the existence of the above-quoted conditions may he properly order the offending imports excluded from entry.

It may well be that most, or even all, of the imports here in question infringe a valid United States patent and, accordingly, that their importation constitutes an "unfair act" within the purview of the applicable statute. I do not find it necessary to resolve this issue, however, because the statute does not make such an unfair act, standing alone, unlawful; the statute expressly provides that such an act is

unlawful only when its effect or tendency is "to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry * * *."

My disagreement with the other Commissioners is twofold. First, I do not believe that the proper domestic "industry" has been identified for purposes of this investigation. As a consequence, adequate economic data have not been developed from which to judge whether such industry is being destroyed or substantially injured--from whatever cause--or whether the industry is efficiently and economically operated. Second, even if it be assumed for the sake of argument that the proper domestic industry has been identified, I do not believe the facts of record demonstrate that the effect or tendency of the importation of the products in question, whether "fair" or "unfair," is to destroy or substantially injure the industry. Each of these positions is more fully developed below.

Domestic "industry" not properly identified

Over the years a number of section 337 cases have come before the Commission in which the unfair act complained of has been the importation of articles that infringe a valid U.S. patent. In each of those cases, the Commission explicitly or implicitly delineated the domestic industry as being coextensive with the firms that actually manufactured or fabricated the like article under the U.S. patent involved. This concept of the term "industry" as used in the statute is amply

substantiated by reference to the legislative history of section 337 and its predecessor, section 316 of the Tariff Act of 1922.

(a) The "unfair competition" provision was added to the 1922 tariff bill in the Senate Finance Committee. In explaining the amendment during floor debate, Senator Smoot, a member of the Finance Committee, commented as follows: 1/

In the economic uncertainty of the present, manufacturers in some lines of merchandise have asked for high tariff rates more because of what they fear than because of what they are experiencing. Such a law as I have suggested would assure American producers that they will not be subjected to unfair competition from countries abroad. /Emphasis added./

(b) In the same vein was an observation by Senator Sackett, made in the course of questioning a witness during hearings on the bill which became the Tariff Act of 1930. This questioning followed a suggestion by the witness that where the "unfair act" being complained of was importation of an article which infringed a U.S. patent, there was an adequate remedy at law in the duly constituted courts and therefore no need for a proceeding under section 337. On the heels of this observation, Senator Sackett inquired as follows: 2/

Wouldn't that manner of doing it /i.e., litigation/ delay the relief of the American manufacturer for an indefinite period, and isn't this /i.e., a section 337 proceeding/ a quicker way of getting at it? /Emphasis added./

1/ Congressional Record, vol. 62, p. 5879.

2/ U.S. Senate, Committee on Finance, Tariff Act of 1929: Hearings . . . on H.R. 2667, 71st Cong., 1st sess., vol. XVII, 1929, p. 78.

(c) During Senate floor consideration of the same bill, Senator Bratton offered an amendment to require the complainant in a section 337 case to post a bond as a condition precedent to the issuance of a temporary exclusion order pending final determination of the facts in the case. In explaining the amendment, Senator Bratton said: 1/

* * * the pending amendment offered by me is to paragraph (e) of section 337, entitled "Unfair practices in import trade." The effect of the amendment, if adopted, will be to withhold the right to place an embargo against the importation of a commodity unless and until the domestic manufacturer or producer on whose application the proposed order of exclusion is based shall give a bond to protect the importer in question in the event it shall thereafter be determined that the complaint was unfounded. /Emphasis added.

The Bratton amendment was agreed to on the floor, but stricken in conference.

(d) Also in the course of the Senate floor debate on this bill, Senator Barkley offered an amendment to permit the Court of Customs and Patent Appeals to review questions of fact as well as of law in appeals from findings of the Tariff Commission. Senator Barkley explained his amendment as follows: 2/

* * * the amendment is simply this: It is provided in section 337 that the President may under certain circumstances issue a proclamation prohibiting the importation of any articles where the Tariff Commission after investigation has found that an unfair practice has been engaged in in the importation or in the attempted

1/ Congressional Record, vol. 71, p. 4638.

2/ Congressional Record, vol. 71, p. 4648.

importation of the article. The question as to whether there has been an unfair practice is a matter of fact; it is not a question of law. I can hardly conceive how a question of technical construction of a law could enter into this situation, because whether there is an unfair practice or whether some American importer has undertaken to take advantage unfairly of an American manufacturer or producer for the purpose either of destroying an industry or preventing the establishment of an industry, is a matter of fact. [Emphasis added.]

The foregoing excerpts from the legislative history of section 337 and its predecessor demonstrate that the "industry" which the Congress had in mind when it sought to afford protection against unfair import competition was the manufacturer or fabricator of the domestic article.

The fact that the statute requires a finding that the "industry" in question be "efficiently and economically operated" further suggests that it is the manufacturer to which its protection is addressed. In cases where the "unfair act" is the importation of an article which infringes a domestic patent, the reference must be to the manufacturer, since the concept of efficient and economical operation is entirely foreign to the question of the substantive rights of a patentee and the protection thereof. If the statute were addressed to the patent rights per se of a patentee, there would be no need for the test of efficiency and economy of operation. Indeed, there would be no occasion to assign the Commission any part in such an investigation, since the Commission has no expertise in the patent field.

In this case the complainant, Quikey Manufacturing Co., Inc. (hereinafter referred to as "Quikey"), is the patentee, but does not manufacture the patented squeeze coin purse. The article is manufactured for Quikey by Steere Enterprises (hereinafter referred to as "Steere"). After receiving the fabricated article from Steere, Quikey performs certain operations preparatory to marketing, none of which are covered by the patent which allegedly is being infringed, prior to distribution--viz: (a) cutting holes and adding chains (this operation is performed on most of the articles sold for retail, which represent about 25 percent of total sales, and on about 1 percent of the articles sold for advertising purposes); (b) mounting on cards for retail; and/or (c) imprinting the purses with advertising requested by the purchaser. Accordingly, it would appear that in order to be consistent with both the legislative concept of "industry" in section 337 cases and the Commission's past application of this concept, the "industry" in this instance would have to be regarded as consisting of Steere, since Steere is the actual manufacturer of the article covered by Reissue Patent No. 24,166. Quikey, the patentee, is, in the final analysis, merely the primary distributor of the article.

The Commission is in possession of very little factual information that would enable it to determine whether Steere is an industry "efficiently and economically operated" or whether the effect or tendency of the imports in question is to "destroy or substantially

injure" Steere, both of which determinations are essential to a recommendation that the offending articles be denied entry. Even in the absence of any other reason, I would for this reason alone be constrained to disagree with the finding of the other Commissioners.

I observe also that yet another interpretative problem would have to be resolved if the patentee were taken as the point of reference in delineating the "industry" with respect to which the finding is to be made: namely, is the patentee (Quikey) alone the "industry," or is the patentee (Quikey) plus the manufacturer (Steere) the "industry"? Fortunately it is not necessary to consider this question since, as will be demonstrated directly, there is no factual support for a finding that the industry--whether conceived of as Quikey alone or as Quikey plus Steere--is being destroyed or substantially injured.

For purposes of the discussion that follows, it will be assumed that Quikey alone is the industry, in order to give fullest possible play to the finding of the other Commissioners. My disagreement with their finding would, of course, be even more emphatic if the "industry" here were to be regarded as embracing both Quikey and Steere, since, as noted before, there is very little economic data available upon which to judge the effect of the imports in question upon Steere. How could there be a responsible assessment of the question of destruction of, or substantial injury to, an industry with an essential component of the industry virtually omitted from the investigation?

Domestic industry neither substantially injured nor destroyed

As previously observed, more than a finding of unfair methods of competition or unfair acts in the importation of articles into the United States is required to support action by the President to exclude the offending articles under section 337. It must be established that the unfair methods of competition or unfair acts have the effect or tendency "to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry."

In this case it is unnecessary to consider whether an industry is being prevented from establishment, since no claim to that effect has been made. By the same token, it is unnecessary to consider the question of "destruction" of the industry here since, in my view, even the less stringent test of "substantial injury" cannot be met.

As a point of departure, it is important to place in proper perspective the statutory requirement that "substantial injury" be found. How serious must the injury to the industry be in order to be regarded as "substantial" within the meaning of section 337? Some guidance is afforded by the well-established principle of statutory construction that statutory terms must be read in pari materia with each other. Applying this test, we find that the words "substantially injure" in section 337 are closely associated

with the words "destroy" and "prevent the establishment." Indeed, the words "substantially injure" are inserted between these two terms. Thus, on either side of the term in question there are terms which pertain either to the very destruction of the industry if one already exists, or to prevention of its initial establishment. In this context the proper meaning to attach to the words "substantially injure" would appear to be an injury of such severity as might well jeopardize the continued existence of the industry. By the same token, any "tendency" to "substantially injure" the industry must be so pronounced as to constitute an imminent threat of bringing about the aforementioned result. In other words, it may be posited that the Congress contemplated that the injury requisite to set in motion the exclusionary machinery of the statute must be a crippling injury, one which has brought or threatens to bring the industry close to the brink of destruction, rather than one that amounts to little more than a competitive nuisance.

In this connection it is appropriate to observe that the Commission's findings in section 337 proceedings are not made in a vacuum. Whenever the Commission advances the conclusion that "substantial injury" exists the facts developed during the course of the investigation must be such that they would stand the test of judicial review. Section 337 contains a provision that an appeal may be taken to the Court of Customs and Patent Appeals from findings

of the Commission on questions of law. It is well established that the question of whether factual determinations of the Commission are supported by "substantial evidence" would be a question of law. By judicial interpretation, "substantial evidence" is much more than a mere scintilla; it means such relevant evidence as a reasonable mind would accept as adequate to support the conclusion in question.^{1/} Thus, as a matter of law the Commission's finding that the unfair act complained of has the effect or tendency to destroy or substantially injure the domestic industry in question must be supported by substantial evidence upon judicial review. It is therefore incumbent upon the Commission in making this finding to be satisfied that it is predicated upon substantial evidence in the first instance.

Apropos this point, I should like to make an additional observation. As a matter of equity such encompassing punitive action as the complete exclusion of imports should not be recommended by the Commission unless it is clear beyond preadventure that the offending imports have, or are practically certain to have, the destructive effects on the domestic industry that the statute specifically names.

In applying the "substantial evidence" test, it is necessary to look to the economic posture of Quikey's business as a whole. There is no "segmentation" concept in section 337, such as that contained in

^{1/} See Consolidated Edison Co. v. National Labor Relations Board, 305 U.S. 197 (1938).

section 7(e) of the Trade Agreements Extension Act of 1951 with respect to escape-clause investigations. ^{1/} Thus, in this case, Quikey's operations with respect to squeeze-type coin purses alone cannot be regarded as the appropriate "industry" even on the premise that Quikey could properly be regarded as constituting the industry; rather, Quikey's overall operations must be taken into account.

With respect to the problem of identifying the industry, there is a close parallel between the instant case and a section 337 case that came before the Commission in 1954 concerning synthetic star sapphires and synthetic star rubies. There, the "industry" was identified as the Synthetic Crystals Division of Linde Air Products Co., a subsidiary of Union Carbide & Carbon Corp. About 90 percent of the business of the Synthetic Crystals Division was the production of high-temperature corundum derivatives, a substantial part of which were synthetic star sapphires and rubies, the other 10 percent of the business being devoted to the production of other synthetic gems and crystalline products. ^{2/} In the instant case, the squeeze coin purses here under consideration accounted for 94 percent of Quikey's gross sales in 1959, for about 86 percent of them in 1960, and for

^{1/} In escape-clause investigations, the term "industry" is used in a "line of production" sense--that is, to identify insofar as possible the particular segment of a producing organization which is devoted exclusively to the production of the product in question.

^{2/} Report of the U.S. Tariff Commission in the matter of investigation of alleged unfair methods of competition and unfair acts in the importation and sale of synthetic star sapphires and synthetic star rubies (sec. 337, Tariff Act of 1930, Docket No. 13), dated Sept. 20, 1954, p. 40.

75 percent in 1961. The case concerning synthetic star sapphires and rubies is therefore ample precedent for regarding the "industry" in this case as consisting of Quikey's overall operations.

With preliminary considerations disposed of, it is now appropriate to turn to an analysis of the facts which were adduced in the course of this investigation, measured against the statutory requirements.

Nature of complainant's business

An appraisal of the impact of imports in the instant case requires an understanding of the nature of the complainant's business.

Quikey is mainly an originator and distributor of advertising specialties, and it markets three principal products: (1) the self-closing purse or container covered by U.S. Reissue Patent No. 24,166; (2) the "Little Octopus" soap holder; and (3) a plastic key container. All of these articles are designed primarily to carry a printed advertising message or goodwill slogan ordered by the ultimate distributor; such advertising specialties are the familiar "giveaways" passed to customers by many businesses, such as banks, filling stations, and bowling alleys. Quikey not only handles all sales and distribution of its products but also performs operations on them prior to distribution, chiefly the printing of advertising thereon.

The Quikey purse has been the predominant source of the company's sales revenue over the past decade. ^{1/} As previously mentioned, this item accounted for 94 percent of total sales in 1959, 86 percent in 1960, and 75 percent in 1961. The changes in these percentages reflect in part a moderate decline from 1959 in purse sales (which were approximately at the same level in both 1960 and 1961), but to a much greater extent they reflect a substantial expansion in sales of the "Little Octopus" soap holder. Sales of the plastic key holder have not been a significant factor in Quikey's total sales.

About 75 percent of Quikey's purse sales are made in the advertising specialty field, ^{2/} and the company delivers the purses with the customer's advertising matter printed thereon in response to orders that are solicited primarily by advertising specialists. The remainder of Quikey's production is marketed through jobbers to the retail trade--mostly 5-and-10-cent stores; some of these purses bear no printed material, while others are imprinted with various designs, such as pictures or sketches of public buildings and monuments, and are sold as souvenirs.

In the advertising specialty field, to which the bulk of Quikey's containers are sold, competition among products is very keen. Articles

^{1/} William B. Stiller, Transcript of the hearing, pp. 24, 62.

^{2/} Stiller, Transcript of the hearing, pp. 35, 66. The Commission was advised by counsel for Quikey on Feb. 27, 1962, that the actual percentages were 76.7 in 1959, 74.6 in 1960, and 76.6 in 1961.

given away by retail concerns to build goodwill include an almost endless variety of items, such as calendars, ball-point pens, card cases, purses, key rings and containers, mirrors, diaries, ash trays, and cigarette lighters. An advertising specialist jobber doing business on a national basis advised the Commission that his firm offered its customers choices among approximately 2,000 different articles. ^{1/} He also stated that, with the exception of calendars, only about 10 percent of the items on his list in a given year are offered again in the following year. ^{1/} Apparently, the popularity of a new and attractive advertising specialty normally increases for a short period and then declines rapidly, to be supplanted by another article with fresh, novel appeal.

The sales trend for the Quikey purse appears to have followed the aforementioned general pattern, although both the rise and decline in sales curve have extended over more years than is typical for most advertising specialties. From the introduction of the Quikey purse in 1951, its sales rose rapidly and steadily through 1955, in which year its sales were the highest on record. Starting in 1956, annual sales declined steadily through 1961, except for a modest increase in 1959. The most acute decline took place between 1955 and 1958, when sales fell by 33 percent. Beginning with 1958, annual sales apparently reached a fairly stable level, and they have continued at approximately

^{1/} William DeJong, Transcript of the hearing, p. 126

the same level with only a slight downward tendency in the last few years. While the Quikey purse has been an exceptionally stable item in the advertising specialty field, it has not been unaffected by domestic market factors that are normally operative in the sale of such novelties.

Quikey's competition from other purses

Quikey purses receive competition primarily from other domestically fabricated, self-closing purses. Imported self-closing purses were, for all practical purposes, a factor only during 1960 and 1961. Even during that period, imports offered far less formidable competition to the Quikey purse than did other domestically fabricated purses.

Competition from domestic sources.--Self-closing purses made of plastic materials and closely resembling the purse on which Quikey holds U.S. Reissue Patent No. 24,166 have been produced and marketed by several domestic concerns. ^{1/}

Although the question of patent infringement by U.S. producers is not pertinent to this investigation, information on the production and sale of competitive articles in the United States--whether or not they infringe Quikey's patent--is pertinent. For this reason the Commission endeavored to obtain data on the production and sale of plastic self-closing purses by known domestic manufacturers besides Quikey.

^{1/} Seven such concerns have been charged with infringing Quikey's patent. Quikey has succeeded in obtaining an out-of-court agreement or a consent decree under which certain of these manufacturers have agreed to cease production of the infringing articles. The Commission understands also that legal action against other manufacturers is pending or is contemplated.

Unfortunately the statistics that the Commission was able to obtain on the production and sale of self-closing purses by the other domestic producers are incomplete; they cover the operations of only two concerns. These incomplete data, nevertheless, are highly illuminating in several respects. The combined output of the two companies in 1960-61, for example, was very much larger than the combined imports in those years. The number of purses sold by the two concerns during the years 1958-60 was equivalent to about one-third of the number sold by Quikey in the same period. The prices at which those two concerns sold their purses in the period 1958-61 averaged roughly 50 percent below the prices of the Quikey purses. If data on production and sales were available for all domestic manufacturers of plastic self-closing purses, they would show that Quikey experienced an aggregate of competition from domestic producers significantly greater than that revealed by the incomplete statistics reported above.

The competition confronting Quikey from domestic sources appears to be infinitely more severe than that from imports. Not only has the volume of sales of competing domestic purses been much larger, but the quality of those domestic purses has generally been superior to that of the imports. Further, the domestic purses have been widely distributed as advertising specialties--the market area from which Quikey derives three-fourths of its sales revenue--whereas no imported purses have been marketed in that field.

Samples obtained by the Commission of self-closing purses manufactured by Quikey's domestic competitors are in general closely comparable with the Quikey purse, and have many of the same quality features. Some of the competing purses are virtually duplicates of the Quikey oval design, while others are in oblong, circular, and various novel shapes; and all of them are sold at much lower prices than the Quikey purse. In view of the facts cited above, the competing domestic purses have unquestionably been a potent factor in the decline in sales of the Quikey purse, particularly as an advertising specialty.

Competition from imports.--As stated earlier, imports of self-closing purses were significant in only 2 years, 1960 and 1961. They totaled 4,900 gross in 1960 and 842 gross in 1961, representing a decline of 83 percent. ^{1/} The only entry since 1961 was a very small shipment imported in January 1962 by a foreign trade association for free distribution--not for sale. Imports, instead of rising, or showing signs of rising, have dwindled to nought. Even when imports were largest (1960), they were equivalent to only about 15 percent of the aggregate number of purses reported sold by Quikey and the two other domestic producers who supplied sales data. The actual ratio, of course, was smaller, inasmuch as sales were made also by other producers of plastic squeeze purses from whom sales information could not be obtained.

^{1/} These are the statistics of imports that the Commission had before it in arriving at its split decision. These statistics are based on official entries of imports reported to the Commission by U.S. collectors of customs. There are some discrepancies between these statistics and those supplied directly to the Commission by certain importers. The discrepancies are not of such magnitude, however, as to affect my decision in this case.

The imports that did enter in 1960 and 1961 offered little effective direct competition to Quikey. For the most part, they were of poorer quality; they differed substantially in size, finish, usefulness, and certain other features; and they were sold exclusively to the over-the-counter trade, a marketing field that accounted for only 25 percent of Quikey's sales.

The complainant himself presented conclusive evidence that the imported purses were distinctly inferior in quality to the Quikey purse--in finish, flexibility, thickness of wall, and general attractiveness. ^{1/} The Quikey purse is an oval whose dimensions are 2 by 3 inches across the broadest axes and about one-half inch in depth; it flexes easily and firmly, and will hold a substantial number of all sizes of coins. On the other hand, 79 percent of the imports (4,546 gross) in 1960-61 were miniature purses, 2 by 1-1/2 inches in dimension at the broadest axes and about 3/8-inch in depth. Only 1,196 gross of the imports were the same size as the Quikey purse.

The usefulness and "purchase appeal" of the miniature purse, as compared with the Quikey purse, are much less than the difference in dimensions might indicate. Since the wall of the miniature purse is only about one-fourth or one-fifth as thick as that of the Quikey purse, it does not have a firm flexing action and is not nearly as durable; also, the miniature can hold only a few small coins. Further,

^{1/} Stiller, Transcript of the hearing, pp. 32-33, 43.

the miniature purse is distinctly inferior to the Quikey purse in details of finish and crispness of appearance--so much so that complainant's witness testified that Quikey would face serious problems if it sought to market such merchandise in the United States. ^{1/}

From the foregoing observations, it is apparent that four-fifths of the imports in 1960-61 were so much inferior to the Quikey purse and otherwise so different from it that they could not have encroached significantly upon Quikey's sales--or, for that matter, even the sales of Quikey's domestic competitors. None of the aforementioned imports entered the advertising specialty field, which accounts for 75 percent of Quikey's sales. The remaining one-fifth of the imports, which also were marketed through the retail trade (mostly souvenir counters and 5-and-10-cent stores), likewise displaced few Quikey sales. Only 25 percent of Quikey's sales were to retail outlets, and here the principal competition came from domestic competitors who offered good-quality purses at prices much below Quikey's.

The complainant, however, bases his principal contention regarding injury from imports upon damage inflicted, or about to be inflicted, to his advertising specialty sales. The essence of his argument is that sales of the distinctly inferior imported purses (without advertising) at low prices have discouraged, and will continue to discourage, potential customers from buying Quikey's purse as an advertising specialty

^{1/} Stiller, Transcript of the hearing, p. 33.

item. ^{1/} The only factual evidence offered in support of the contention is a record of annual sales of Quikey purses in the years 1956-59 by four of Quikey's leading advertising specialty jobbers located in Canada.

Aggregate annual sales of the aforementioned jobbers declined substantially from 1956 through 1959. During the same period there were imports into Canada of plastic self-closing purses identical with those imported into the United States, none of which entered into the advertising field in Canada; and the imports were available at prices much lower than those quoted to advertisers for the Quikey purse imported from the United States. ^{2/} From the foregoing recital of events, it was implied that the decline in Canadian sales of Quikey purses was attributable to the Canadian imports of lower priced purses of the kinds that have entered the United States.

Apart from the consideration that what happened in Canada (where Quikey has no patent) need not be expected to occur in the United States (where the company does have a patent), no causal relation was established between Canadian imports of low-priced, self-closing purses and the decline in sales in Canada of Quikey purses imported from the United States. The downtrend in Quikey's sales in Canada appears merely to have paralleled the decline in Quikey's sales over the same period

^{1/} Amended complaint of the Quikey Manufacturing Co., Inc., pars. 30-31.

^{2/} Imports into Canada of plastic self-closing purses, including those from Hongkong, are dutiable at 22½ percent ad valorem.

in the United States--a period when there was a complete absence of imports of self-closing purses into the United States.

Complainant's financial position.--There is no evidence of measurable impairment of the economic position of the complainant that can be assigned to import competition. If financial deterioration had occurred, it would have been manifest in a marked decline in sales and net profits in 1960-61, when the imports entered--but no such decline took place. The financial data obtained by the Commission regarding Quikey's operations in the whole period 1957-61 point to a contrary development.

Quikey's total annual net sales--which consist preponderantly of sales of coin purses--increased markedly after 1958, with 1961 representing the high point in the past 5 years. Indeed, the value of its sales was 14 percent higher in 1961 than in 1958, a year in which there were no imports of plastic self-closing purses. In 1960, when imports were largest, Quikey's total sales revenues were 2 percent greater than in 1958. Moreover, despite the expected normal influences tending to reduce the marketability of such an advertising novelty as the Quikey purse, the number sold also has been quite stable in recent years, with sales in both 1960 and 1961 being only slightly below those in 1958.

Quikey's profits in the most recent years have been even more salubrious than its sales. Annual earnings in 1960 showed a 51 percent

gain over those in 1959, and earnings in 1961 were 22 percent higher than those in 1960. ^{1/} Total profits were much larger in both 1960 and 1961, when imports did occur, than in any of the years 1957-59, when there were no imports. The financial data also show that the company was able to achieve a substantially higher ratio of profits to sales in 1960-61 than in any of the preceding 3 years. The ratio of profits to sales in 1960, for example, was 24 percent higher than the ratio in 1958 and 52 percent higher than that in 1959; and in 1961 the ratio of profits to sales was 10 percent higher than that in 1960.

An incidental conclusion which emerges from the data with reference to the level and trend of profits deserves mention. In 1960 Quikey was still in the early stages of introducing the "Little Octopus" soap holder in the U.S. market, and in 1961 it began to introduce the new plastic key container. Since heavy initial expenses in introducing new advertising specialties must bear more heavily on the promoter than on the specialty jobber, ^{2/} Quikey's aggregate operating expenses were no doubt proportionately higher in 1960-61 than in earlier years, and total profits consequently lower, as a result

^{1/} Because of changes during 1957-61 in the business structure of the complainant--a concern closely held by members of the Stiller family--involving changes in accounting methods, the Commission's accountants found it necessary to adjust the financial data to produce a comparable annual record of profits. This record, as adjusted, includes all returns to members of the Stiller family--including profits, royalties, and officers' salaries.

^{2/} DeJong, Transcript of the hearing, pp. 109-112.

of abnormal expenses attributable to launching new products on the market. Certainly, the situation creates a strong presumption that Quikey's profits on coin purses alone were greater in 1960-61 than is shown by the overall profit figures that the Commission was able to obtain as reviewed above.

Conclusion

The statute pursuant to which this investigation has been conducted, section 337 of the Tariff Act of 1930, as amended, requires the Commission to find, before it may recommend exclusion of imports, that the effect or tendency of the unfair act or method of competition complained of is "to destroy or substantially injure an industry, efficiently and economically operated, in the United States."

In my view, the Commission has not identified the proper "industry" for purposes of this investigation. The legislative history of section 337, as well as a reasonable construction of its language, indicates that the statutory protection is intended for the domestic producers who are adversely affected by unfair acts or methods of competition in the importation of articles into the United States; and the Commission so delineated the "industry" in all previous cases. But in this case, the Commission has virtually ignored the operations of the actual producer of the domestic article under consideration, focusing instead upon the operations of the distributor of the article, who happens to be the holder of the patent under which the domestic article is

made. As a consequence, the Commission has before it little information upon which to base a judgment either that the industry contemplated by the statute is efficiently and economically operated or that the effect or tendency of the acts complained of is to destroy or substantially injure this industry.

Even if it were conceded that the "industry" selected by the other Commissioners in this investigation is appropriate, the evidence obtained falls far short of showing that the effect or tendency of the unfair acts complained of is to destroy or substantially injure this industry. The plain language of the statute requires that the industry be found to be so affected by the offending imports that its continued existence would be jeopardized or imminently threatened. No such severe consequences are apparent from the acts here complained of. Indeed, my conclusion would be no different even if the term "substantially injure" were ascribed a meaning which requires a much lesser degree of injury than is clearly contemplated by the statute.

In view of the foregoing, I must disagree with the other Commissioners in this case and must hold that there is no valid basis upon which to recommend that the imports here under consideration be excluded from entry into the United States.

Respectfully submitted.



Ben Dorfman
Chairman

APPENDIX A

SECTION 337 - UNFAIR PRACTICES IN IMPORT TRADE

SECTION 337 - UNFAIR PRACTICES IN IMPORT TRADE

- (a) Unfair methods of competition declared unlawful. - Unfair methods of competition and unfair acts in the importation of articles into the United States, or in their sale by the owner, importer, consignee, or agent of either, the effect or tendency of which is to destroy or substantially injure an industry, efficiently and economically operated, in the United States, or to prevent the establishment of such an industry, or to restrain or monopolize trade and commerce in the United States, are hereby declared unlawful, and when found by the President to exist shall be dealt with, in addition to any other provisions of law, as hereinafter provided.
- (b) Investigations of violations by commission. - To assist the President in making any decisions under this section the commission is hereby authorized to investigate any alleged violation hereof on complaint under oath or upon its initiative.
- (c) Hearings and review. - The commission shall make such investigation and give such notice and afford such hearing, and when deemed proper by the commission such rehearing, with opportunity to offer evidence, oral or written, as it may deem sufficient for a full presentation of the facts involved in such investigation. The testimony in every such investigation shall be reduced to writing, and a transcript thereof with the findings and recommendation of the commission shall be the official record of the proceedings and findings in the case, and in any case where the findings in such investigation show a violation of this section, a copy of the findings shall be promptly mailed or delivered to the importer or consignee of such articles. Such findings, if supported by evidence, shall be conclusive, except that a rehearing may be granted by the Commission and except that, within such time after said findings are made and in such manner as appeals may be taken from decisions of the United States Customs Court, an appeal may be taken from said findings upon a question or questions of law only to the United States Court of Customs and Patent Appeals by the importer or consignee of such articles. If it shall be shown to the satisfaction of said court that further evidence should be taken, and that there were reasonable grounds for the failure to adduce such evidence in the proceedings before the commission, said court may order such additional evidence to be taken before the commission in such manner and upon such terms

and conditions as to the court may seem proper. The commission may modify its findings as to the facts or make new findings by reason of additional evidence, which, if supported by evidence, shall be conclusive as to the facts except that within such time and in such manner an appeal may be taken as aforesaid upon a question or questions of law only. The judgment of said court shall be final.

(d) Transmission of findings to President. - The final findings of the commission shall be transmitted with the record to the President.

(e) Exclusion of articles from entry. - Whenever the existence of any such unfair method or act shall be established to the satisfaction of the President he shall direct that the articles concerned in such unfair methods or acts, imported by any person violating the provisions of this Act, shall be excluded from entry into the United States, and upon information of such action by the President, the Secretary of the Treasury shall, through the proper officers, refuse such entry. The decision of the President shall be conclusive.

(f) Entry under bond. - Whenever the President has reason to believe that any article is offered or sought to be offered for entry into the United States in violation of this section but has not information sufficient to satisfy him thereof, the Secretary of the Treasury shall, upon his request in writing, forbid entry thereof until such investigation as the President may deem necessary shall be completed; except that such articles shall be entitled to entry under bond prescribed by the Secretary of the Treasury.

(g) Continuance of exclusion. - Any refusal of entry under this section shall continue in effect until the President shall find and instruct the Secretary of the Treasury that the conditions which led to such refusal of entry no longer exist.

(h) Definition. - When used in this section and in sections 338 and 340, the term "United States" includes the several States and Territories, the District of Columbia, and all possessions of the United States except the Virgin Islands, American Samoa, and the Island of Guam.

APPENDIX B

PATENT STUDY

Claim 1

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery."

Application of Claim to Complainant's Exhibit G and Defendant's Exhibits 1 and 2 (Identical Imports from Hong Kong)

Complainant's witness Henry: " *** that is what it [Exhibit G] is *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: " *** 'elastic' *** means the power to return to the form from which a body has been bent, extended, pressed, pulled, or distorted." (See Kitson Co. v. Lettimer-Stephens Co., C.A.3d 1930, 37 F.2d 562, 563.)

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Periphery" is defined in Webster's New International Dictionary, Second Ed., as "The line bounding a rounded surface *** " (See also Hausman v. Hochman, C.C.P.A. 1936, 83 F.2d 703, 705.)

Patent file wrapper: On October 3, 1952, the patent applicant filed Amendment 4 to the application wherein he requested that "substantially" be inserted before "transverse". On April 15, 1953, the patent examiner advised the patent applicant "The claims *** recite a 'peripheral edge', and no basis can be found for an 'edge' as applied to the genuine dis-closed." On October 8, 1953, the patent applicant filed Amendment B to the application wherein 'peripheral edge' was changed to 'periphery'.

1/ As noted in his dissenting statement, Chairman Dorfman does not consider it necessary to resolve the question of whether the imported articles here under consideration are made in accordance with a valid United States patent, and therefore disassociates himself from that Patent Study.

Claim 1 (Cont'd.)

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery."

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

In the amendment it was pointed out that after the amendment "the slit *** is defined as extending from one periphery to an opposite periphery. *** All of the *** claims now in the case call for *** a transverse slit in one face extending from one periphery to the opposite periphery or from one aperture to an opposite aperture. *** The crux of applicant's invention is a purse which *** has a *** slit in one face extending substantially from one side or periphery to the other, so that by squeezing opposite sides of the purse between the fingers or in the hand the slit opens to make substantially the entire interior volume of the purse instantly accessible. *** Applicant's purse when opened instantly exposes all of the coins lying on the opposite flat surface, so that the user may select any coin." On January 28, 1956, in a petition for a reissue patent, the applicant stated: " *** the face 2 is provided with a through slit 3 coextensive with the major axis of the elliptical pouch. At the ends, the slit communicates with circular openings 4 and 5 with axes parallel to the major axis of the pouch. *** the slit is started at one end, at opening 5 for instance, and is continued along the domed side 2 until it communicates with the other opening 4."

Complainant's witness Henry: " *** which it does *** " (See tr. 84, 85.) "The slit extends almost to the periphery in each case [in Exhibits G and 1] insofar as the length of the slit is concerned. [The slit] extends to the periphery. It [the slit in Exhibit 1] extends to the periphery ***. This one [Exhibit G] extends to the periphery also. *** when you have something that is curved like this, the edge of either one of these exhibits, G or your Exhibit 1, when you have a curved edge, the periphery *** is the edge of the article, not the flat top surface or the bottom surface. It has no edge. A circle has no edge. The outermost edges of these articles are circular in shape." (See tr. 98.) " *** the periphery extends where the flat surface is terminated. I think [it is where the plain surface or flat surface ends; there the periphery begins]. The edges

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery." (Repeated)

of these articles are the periphery of the article[s]. [The slit in Exhibits 1 and 2 does] extend to the edges at the periphery. It is molded that way. Exhibit G is molded that way. Exhibit G is formed that way." (See tr. 99.)

Complainant's Teare and Freeman: "The first purported defense is that the Kroll item is not slit from periphery to periphery. This is a false statement. *** The slit in Exhibit G *** extends across the face thereof so as to *** extend from periphery to periphery within the meaning of the patent." (See reply of Quikey to answer of Kroll, p. 3.)

Respondent's Kroll: "The Quikey item contains a slit from periphery to periphery; the Kroll item is not slit in that manner. (See answer of Kroll, p. 3, par. 2.)

Respondent's witness Kroll: "I maintain, the Kroll Trading Company maintains, that our large purse is not slit from periphery to periphery, which we believe was the basis for the patent application." (See tr. 132.) " *** mine [Exhibit 1] is not slit from periphery to periphery, and I have a half inch of leeway there ***. In *** the other one [Exhibit G] by continually opening and closing it, the slit may have been cut." (See tr. 145.)

Commission's finding: In complainant's Exhibit G the slit goes to the extreme ends of the container, but only because the original slit has been extended by tearing which apparently would result from normal use. Respondent's Exhibits 1 and 2, and an additional sample furnished by the respondent, are identical with complainant's Exhibit G except that the slit in respondent's containers has not yet extended to the extreme ends. However in order to conform with the claim element the slit need not extend to the extreme ends or edges. The word "edge" was disallowed and eliminated from the element at the instance of the patent examiner. The periphery begins where the comparatively level top surface stops and the pronounced or abrupt curvature starts. The slit is "substantially transverse" and extends from "periphery" to "periphery". This element of the claim reads on the exhibits.

Claim 2

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery,"

"the face bearing said slit being arched."

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit G] is *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: The application of this element is discussed in considering the last element of claim 1. This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Claim 3

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery,"

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit G] is *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: The application of this element is discussed in considering the last element of claim 1. This element of the claim reads on the exhibits.

PATENT STUDY (CONT'D.)

Claim 3 (Cont'd.)

"said envelope having oppositely disposed through apertures, and the respective ends of said slit communicating with respective apertures."

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Definition: "Aperture" is defined in Webster's New International Dictionary, Second Edition, as "an opening; an open space; a gap, cleft, or chasm; a passage perforated; a hole."

Patent file wrapper: On October 8, 1953, the patent applicant filed Amendment B to the application, wherein he stated "Claim [3] distinguishes from claims [1 and 2] in specifying oppositely disposed, through apertures, and the ends of the slit communicating with said apertures. *** [The] Williams [patent, cited as a reference at the end of the patent in question] does not show enlargements at the ends of a normally closed slit ***." On January 28, 1956, in a petition for a reissue patent, the applicant stated " *** the end of the pouch is presented to a drill for formation of the opening 5 ***. Opening 5 could be formed by a rod extending from the mandrel to the opposite rod 10 ***. *** it has been found preferable to form opening 5 with a drill or similar tool ***. Openings 4 and 5 have three important functions. They assist materially in the ready initiation of opening of the slit, they allow for a more expansive opening than would be possible with a slit alone, and they prevent tearing at the ends of the slit ***. *** at least one of the holes is formed as an incident to the manner of attachment of the suspending mechanism. *** "

Complainant's witness Henry: " *** I think a comment is necessary with respect to the last clause ***. The slit in Exhibit G terminates in the periphery of the article, and the ends of the slit themselves constitute the apertures. It doesn't say round holes. The ends of the slit constitute apertures. And even though round holes had been specified in the claim, to omit them would be merely the loss of -- it would be merely the omission of a feature with loss of its function. The round holes are provided at the end of the slit so that as you open up the article, there won't be a tear. It prevents tear of the slit. I am justified, I think, in that opinion, first by a decision in the Squeez-A-Purse Corp., plaintiff, v. Benjamin Stiller, et al., defendant, where the judge held that [it] was an immaterial limitation on the claim. But even though the round holes -- even though the slit is there, I contend that the ends of

Claim 3 (Cont'd.)

"said envelope having oppositely disposed through apertures, and the respective ends of said slit communicating with respective apertures." (Repeated)

Amplification of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

of the slit itself are apertures." (See tr. 85-86.) "Exhibit G which does not have holes at the end of the transverse slit is a direct infringement of Claims *** [claims 3, 5, 6, and 7 were omitted]. Exhibit G in my opinion and under the doctrine of equivalents is the full equivalent of the device set forth in Claims 3, 5, 6, and 7 ***" (See Affidavit dated October 30, 1961.)

Judge Jones [Fed. Dist. Ct.]: " *** doing away with the cut out hole at either end of the slit of the purse and substituting therefor a reinforced element *** constitutes nothing more than a change without substance and an attempt to avoid infringement by unsuccessful means." (See Exhibit BB.)

Complainant's Teare and Freeman: "Whether the item in question has one or two holes *** are questions that relate to limitations not found in the patent claims." (See reply of Quikey to answer of Kroll, pp. 3-4.)

Respondent's Kroll: " *** the Kroll item has only one hole ***." (See answer of Kroll to amended complaint, p. 3, par. 2.)

Commission's finding: In complainant's Exhibit G and respondent's Exhibits 1 and 2, a hole is provided at only one end. A reinforced circular area, where a hole normally would be punched, is provided at the other end. After normal use of the container the slit apparently would extend to the hole at one end and to the reinforced circular area at the other end. The hole-slit-circular reinforcement combination is equivalent to the hole-slit-hole combination, since they perform substantially the same function in substantially the same way to obtain substantially the same result. This element of the claim reads on the exhibits.

Claim 4

"A container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and being generally elliptical in plan,"

"said envelope having at least one side arched,"

"the top region of said arched side having a curvature of less magnitude than the balance of said arched side,"

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Elastic" is defined in considering the second element of claim 1.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Claim 4 (Cont'd.)

"and said one side having a normally closed through slit coextensive with the major axis of said envelope."

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Claim 5

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having properties similar to those of soft rubber."

"said envelope defining a substantially fully closed interior volume and having a depth relatively small in relation to dimensions transverse to its depth."

Complainant's witness Henry: " *** that is what it [Exhibit G] is *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Claim 5 (Cont'd.)

"said envelope having oppositely disposed through apertures and a normally closed through slit in one face extending from one aperture to the other aperture,"

"and said face being substantially flat in the region of said slit."

Commission's finding: This element of the claim reads on the exhibits.

Claim 6

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of rubber material"

"formed in substantially flat configuration,"

"said envelope defining a substantially fully closed interior volume"

Complainant's witness Henry: " *** that is what it [Exhibit G] is *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim does not read on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit G] *** " (See tr. 84, 85.)

Commission's finding: This element of the claim reads on the exhibits.

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Commission's finding: The application of this element is discussed in considering the last element of claim 3. This element of the claim reads on the exhibits.

PATENT STUDY (CONT'D.)

Claim 6 (Cont'd.)Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

"bounded by opposed wall sections of said envelope merging together at their peripheral edges"

Commission's finding: This element of the claim reads on the exhibits.

"and spaced apart interiorly of said merged peripheral edges with the distance between said wall sections being relatively small in comparison to the lateral dimension thereof;"

Commission's finding: This element of the claim reads on the exhibits.

"one of said wall sections having a normally closed slit extending transversely thereof between a pair of apertures in said wall section"

Commission's finding: The application of this element is discussed in considering the last element of claim 3. This element of the claim reads on the exhibits.

"with at least one of said apertures being provided in the merged peripheral edge thereof."

Commission's finding: This element of the claim reads on the exhibits.

Claim 2

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

"A hollow body"

Commission's finding: This element of the claim reads on the exhibits.

"of resilient material"

Definition: "The dictionary meaning of 'resilient' is 'Leaping back; rebounding; recolling; returning to or resuming the original position or shape'." (See Daniels v. Permutit Co., D.C.Del. 1942, 44 F. Supp. 74, 79.)
Commission's finding: This element of the claim reads on the exhibits.

"formed in substantially flat configuration"

Commission's finding: This element of the claim reads on the exhibits.

"and being defined by a pair of spaced lateral walls merging together at their peripheries to define an integral edge portion;"

Commission's finding: This element of the claim reads on the exhibits.

"said edge portion having a pair of apertures extending there-through;"

Commission's finding: The application of this element is discussed in considering the last element of claim 3. This element of the claim reads on the exhibits.

"one of said lateral walls having a normally closed slit that interconnects said opposed apertures,"

Commission's finding: The application of this element is discussed in considering the last element of claim 3. This element of the claim reads on the exhibits.

Claim 7 (Cont'd.)

"whereby the application of end pressure adjacent said apertures will cause said lateral wall having said slit to open along said slit to expose and render accessible substantially all of the internal surface of said opposed lateral wall."

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Claim 8

"A coin container of the character described,"

Mr. Schimmel, Solicitor's Office, U. S. Patent Office: This element has no effect whatsoever, since it does not incorporate by reference the preceding claims or elements thereof.

"comprising: a resilient shallow portion of rubbery material"

Definition: "The normal construction of *** 'rubbery ***' is that the product is similar to rubber at least in some of its physical properties as, for example, in its elasticity, stretchiness, and the like." (See Minnesota Mining & Mfg. Co. v. Neisner Bros., D.C.Ill 1951, 101 F. Supp. 926, 928.)

Commission's finding: This element of the claim reads on the exhibits.

"comprising a bottom wall and an upturned peripheral edge:"

Commission's finding: This element of the claim reads on the exhibits.

"a resilient cover integral with said edge"

Definition: "Resilient" is defined in considering the second element of claim 7.
Commission's finding: This element of the claim reads on the exhibits.

Claim 8 (Cont'd.)

Application of Claim to Complainant's Exhibit G and Respondent's Exhibits 1 and 2 (Identical Imports from Hong Kong) (Cont'd.)

"and defining there-
with a hollow body of
shallow depth;"

Commission's finding: This element of the claim reads on the exhibits.

"said cover having a
normally closed slit
across its maximum
transverse dimension;"

Commission's finding: This element of the claim reads on the exhibits.

"said slit extending
from one periphery to
an opposite periphery."

Commission's finding: The application of this element is discussed in considering the last element of claim 1. This element of the claim reads on the exhibits.

Claim 1

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery."

Application to Complainant's Exhibit H (Import from Japan)

Complainant's witness Henry: " *** that is what it [Exhibit H] is *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Elastic" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Periphery" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which it does *** " (See tr. 84.)

Complainant's Teare and Freeman: " *** If the Commission will examine Exhibit H it will certainly be noted that the slit thereof goes from periphery to periphery." (See reply of Qukey to answer of Kroll, p. 3.)
Commission's finding: This element of the claim reads on the exhibit.

Claim 2

"A quick opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber."

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery."

"the face bearing said slit being arched."

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit H] is *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit C and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Periphery" is defined in applying claim 1, last element to Complainant's Exhibit C and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 1, last element to Complainant's Exhibit C and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which it does *** " (See tr. 84.)

Complainant's Tease and Freeman: "If the Commission will examine Exhibit H it will certainly be noted that the slit thereof goes from periphery to periphery." (See reply of Quikley to answer of Kroll, p. 3.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Claim 3

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery,"

"said envelope having oppositely disposed through apertures, and the respective ends of said slit communicating with respective apertures."

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit H] is *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Periphery" is defined in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which it does *** " (See tr. 84.)

Complainant's Teare and Freeman: "If the Commission will examine Exhibit H it will certainly be noted that the slit thereof goes from periphery to periphery." (See reply of Quikkey to answer of Kroll, p. 3.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Claim 4Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

"A container for articles"

Commission's finding: This element of the claim reads on the exhibit.

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.
Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

"and being generally elliptical in plan,"

Commission's finding: This element of the claim reads on the exhibit.

"said envelope having at least one side arched,"

Commission's finding: This element of the claim reads on the exhibit.

"the top region of said arched side having a curvature of less magnitude than the balance of said arched side,"

Commission's finding: This element of the claim reads on the exhibit.

"and said one side having a normally closed through slit co-extensive with the major axis of said envelope."

Commission's finding: This element of the claim reads on the exhibit.

Claim 5

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume and having a depth relatively small in relation to dimensions transverse to its depth,"

said envelope having oppositely disposed through apertures and a normally closed through slit in one face extending from one aperture to the other aperture,"

"and said face being substantially flat in the region of said slit."

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit H] is *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which [apertures] it has, and *** those apertures are really round holes, but the claim doesn't specify round holes. It just says apertures." (See tr. 85.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Claim 6

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of rubber material"

"formed in substantially flat configuration,"

"said envelope defining a substantially fully closed interior volume"

"bounded by opposed wall sections of said envelope merging together at their peripheral edges"

"and spaced apart interiorly of said merged peripheral edges with the distance between said wall sections being relatively small in comparison to the lateral dimension thereof;"

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Complainant's witness Henry: " *** that is what it [Exhibit H] is *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim does not read on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Complainant's witness Henry: " *** all of which is true with respect to the article [Exhibit H] *** " (See tr. 84.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Claim 6 (Cont'd.)

"one of said wall sections having a normally closed slit extending transversely thereof between a pair of apertures in said wall section"

"with at least one of said apertures being provided in the merged peripheral edge thereof."

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2. Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which [apertures] it has, and *** those apertures are really round holes, but the claim doesn't specify round holes. It just says apertures." (See tr. 85.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Claim 7

"A hollow body"

"of resilient material"

"formed in substantially flat configuration"

"and being defined by a pair of spaced lateral walls merging together at their peripheries to define an integral edge portion;"

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Resilient" is defined in applying claim 7, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Claim 7 (Cont'd.)

"said edge portion having a pair of apertures extending there-through;"

"one of said lateral walls having a normally closed slit that interconnects said opposed apertures,"

"whereby the application of end pressure adjacent said apertures will cause said lateral wall having said slit to open along said slit to expose and render accessible substantially all of the internal surface of said opposed lateral wall."

Claim 8

"A coin container of the character described,"

Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Complainant's witness Henry: " *** which [apertures] it has, and *** those apertures are really round holes, but the claim doesn't specify round holes. It just says apertures." (See tr. 85.)

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Commission's finding: This element of the claim reads on the exhibit.

Mr. Schimmel, Solicitor's Office, U. S. Patent Office: This element of the claim has no effect whatsoever, since it does not incorporate by reference the preceding claims or elements thereof.

Claim 8 (Cont'd.)Application to Complainant's Exhibit H (Import from Japan) (Cont'd.)

"comprising: a resilient shallow tray portion of rubbery material"

Definition: "Resilient" is defined in applying claim 7, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

"comprising a bottom wall and an upturned peripheral edge;"

Commission's finding: This element of the claim reads on the exhibits.

"a resilient cover integral with said edge"

Commission's finding: This element of the claim reads on the exhibits.

"and defining therewith a hollow body of shallow depth;"

Commission's finding: This element of the claim reads on the exhibits.

"said cover having a normally closed slit across its maximum transverse dimension;"

Commission's finding: This element of the claim reads on the exhibits.

"said slit extending from one periphery to an opposite periphery."

Definition: "Periphery" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Claim 1

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery."

Application of Claim to Complainant's Exhibit I (Product of Complainant), Commission's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong)

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Elastic" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Periphery" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper were considered in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Claim 1

"A quick opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery,"

"the face bearing said slit being arched."

ant). Commission's Exhibit 4 (Imports from Japan), Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Periphery" is defined in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Claim 2

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and said envelope having a substantially transverse normally closed slit in one face extending from one periphery to an opposite periphery,"

"said envelope having oppositely disposed through apertures, and the respective ends of said slit communicating with respective apertures."

Application of Claim to Complainant's Exhibit I (Product of Complainant), Complainant's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2. Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Periphery" is defined in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 1, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibit.

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

"comprising a unitary envelope of material having elastic properties similar to those of soft rubber,"

"said envelope defining a substantially fully closed interior volume having a depth relatively small in comparison to dimensions transverse to its depth,"

"and being generally elliptical in plan,"

"said envelope having at least one side arched,"

"the top region of said arched side having a curvature of less magnitude than the balance of said arched side,"

"and said one side having a normally closed through slit coextensive with the major axis of said envelope."

Application of Claims to Compensation Exports 1 (Country of Origin-
ant), Commission's Exhibit 4 (Import from Japan), and Commission's
Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Elastic" is defined in applying claim 1, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Claim 5

Amplification of Claim to Complainant's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

"A quick-opening and self-closing container for articles"

Commission's finding: This element of the claim reads on the exhibits.

"comprising a unitary envelope of material having properties similar to those of soft rubber,"

Commission's finding: This element of the claim reads on the exhibits.

"said envelope defining a substantially fully closed interior volume and having a depth relatively small in relation to dimensions transverse to its depth,"

Commission's finding: This element of the claim reads on the exhibits.

"said envelope having oppositely disposed through apertures and a normally closed through slit in one face extending from one aperture to the other aperture,"

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.
Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

"and said face being substantially flat in the region of said slit."

Commission's finding: This element of the claim reads on the exhibit.

Claim 6

"A quick-opening and self-closing container for articles"

"comprising a unitary envelope of rubber material"

"formed in substantially flat configuration"

"said envelope defining a substantially fully closed interior volume"

"bounded by opposed wall sections of said envelope merging together at their peripheral edges"

"and spaced apart interiorly of said merged peripheral edges with the distance between said wall sections being relatively small in comparison to the later dimension thereof;"

Application of Claim to Complainant's Exhibit I (Product of Complainant), Commission's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Commission's finding: This element of the claim reads on the exhibits.

Complainant's witness Stiller: "This purse [Exhibit I] is made *** [of] polyvinyl chloride ***" (See tr. 29.)

Commission's finding: This element of the claim does not read on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

"one of said wall sections having a normally closed slit extending transversely thereof between a pair of apertures in said wall section"

"with at least one of said apertures being provided in the merged peripheral edge thereof."

Claim 2

"A hollow body"

"of resilient material"

"formed in substantially flat configuration"

"and being defined by a pair of spaced lateral walls merging together at their peripheries to define an integral edge portion;"

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Resilient" is defined in applying claim 7, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Claim 2 (Cont'd.)

"said edge portion having a pair of apertures extending there-through;"

"one of said lateral walls having a normally closed slit that interconnects said opposed apertures,"

"whereby the application of end pressure adjacent said apertures will cause said lateral wall having said slit to open along said slit to expose and render accessible substantially all of the internal surface of said opposed lateral wall."

Application of Claim to Complainant's Exhibit I (Product of Complainant). Commission's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Definition: "Aperture" is defined in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Patent file wrapper: The contents of the file wrapper are considered in applying claim 3, last element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

"A coin container of the character described,"

"comprising: a resilient shallow tray portion of rubbery material"

"comprising a bottom wall and an upturned peripheral edge;"

"a resilient cover integral with said edge"

"and defining therewith a hollow body of shallow depth;"

"said cover having a normally closed slit across its maximum transverse dimension;"

"said slit extending from one periphery to an opposite periphery."

Amplification of Claim to Complainant's Exhibit 1 (Product of Complainant), Commission's Exhibit 4 (Import from Japan), and Commission's Exhibits 5, 6, 7, and 8 (Imports from Hong Kong) (Cont'd.)

Mr. Schimmel, Solicitor's Office, U. S. Patent Office: This element has no effect whatsoever, since it does not incorporate by reference the preceding claims or elements thereof.

Definition: "Resilient" is defined in applying claim 7, second element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.
Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Commission's finding: This element of the claim reads on the exhibits.

Definition: "Periphery" is defined in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.
Patent file wrapper: The contents of the file wrapper are considered in applying this element to Complainant's Exhibit G and Respondent's Exhibits 1 and 2.

Commission's finding: This element of the claim reads on the exhibits.